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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/776,530 | 02/03/2001 | Garth Aaron Hystad | 45303-00070 | 5215 |

7590 06/11/2002

Holme Roberts & Owen, LLP
Suite 4100
1700 Lincoln
Denver, CO 80203-4541

EXAMINER

HORTON, YVONNE MICHELE

| ART UNIT | PAPER NUMBER |
|----------|--------------|
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3635

DATE MAILED: 06/11/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/776,530

Applicant(s)

GARTH AARON HYSTAD

Examiner

YVONNE M. HORTON

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Feb 3, 2001.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-32 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10, 12-14, 16, and 18-32 is/are rejected.
- 7) ☒ Claim(s) 11, 15, and 17 is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s). 1 AND 2 6) ☐ Other:

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DETAILED ACTION

Specification

1. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: There is no support in the specification for the “slot” of claim 17. The specification only details a “space”, but not a “slot” Clarification and correction is required..

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1,4,5,12-14 and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by US patent #3,229,433 to MILES. MILES discloses a deck system including a floor member (1) ⁽¹⁶⁾ having top, bottom and at least three sides; deck support means (11); and first facing means (6). Regarding claims 4 and 5, the first facing is made from an aluminum metal material, column 4 line 20 and 29. In reference to claims 12 and 13, there are first and second deck supports (11) wherein the deck supports are made from natural wood. Regarding claims 14 and 16, the deck assembly further includes a first fastening means such as an adhesive (12) for connecting the first facing (6) to the deck floor member (1).

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Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

6. Claims 2 and 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent #3,229,433 to MILES in view of US Patent #6,061,991 to DAHL. As detailed in paragraph #3 above, MILES discloses the basic claimed deck system except for the deck material being wood composite or synthetic wood. DAHL teaches that it is known in the art to use wood composite or synthetic wood to form the deck member, column 4, lines 65-67. Thus, it would have been obvious to one having ordinary skill in the art to form the deck member of MILES out of a wood composite or synthetic wood, as taught by DAHL, in order to prevent the deck member from absorbing moisture from being exposed to external conditions.

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7. Claims 6,7,9 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent #3,229,433 to MILES in view of US Patent #4,907,387 to TURNBULL. MILES, as detailed in paragraph #3 above, discloses the basic claimed deck system except for the first facing being coated with a surface finish. In particular to claims 6 and 9, TURNBULL teaches that it is known in the art to coat the facing (16) of a deck member (12) with a finish coating (34). Thus, it would have been obvious to one having ordinary skill in the art to provide the first facing of MILES with the finish coating of TURNBULL in order to ensure that the deck has a slip-free or slip resistant upper or wear layer. The finish coating prevents water from accumulating on the deck upper surface. Regarding claim 7, the finish coating of TURNBULL are sand particles which are similar in color to both natural and synthetic wood. In reference to claim 10, TURNBULL, column 3, lines 1-9, teaches that the sand/grit finish coating (34) aids in providing traction to traffic thereon. Due to the fact that there is additional traction, the surface of the first facing is being preserved because the finish surface would need to be worn prior to traffic wearing on the first facing.

8. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent #3,229,433 to MILES. MILES discloses the basic claimed deck assembly except for the metal being treated with a powder paint. Although MILES does not disclose treating his metal material, it is old and very well known in the art to treat metal items knowingly exposed to external conditions in order to prevent corrosion from exposure thereto. Therefore, it would have

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been obvious to one having ordinary skill in the art at the time the invention was made to treat the metal facing of MILES.

9. Claims 18-20 and 22-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent #3,229,433 to MILES in view of US Patent #5,713,171 to ANDRES. MILES discloses the basic claimed deck assembly except for explicitly including a rail member. ANDRES teaches that it is known in the art to provide a deck assembly with rail member (30). In reference to claim 19, the rail member (30) includes first and second posts (30) and rail structure (R) attached thereto. Regarding claim 20, the rail structure includes upper (40-43) and lower (45-48) horizontal members. In reference to claim 22, although ANDRES teaches forming his railing members from a plastic material, it would have been an obvious matter of design choice to select a known material on the basis of its suitability for the use intended. Regarding claims 24-26, ANDRES further teaches the use of plastic balusters (50) connected to the upper (40-43) and lower (45-48) horizontal members by a fastening means (304, 334). In reference to claim 27, the fastening means is a slot (304, 334) formed respectively in the upper and lower horizontal members (40-48). Regarding claims 28 and 29, because the balusters are plastic they inherently have a protective coating or surface finishing. In reference to the type of material used to form the first and second facings, it too would have been an obvious matter of design choice to select a known material on the basis of its suitability for the use intended.

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10. Claims 21 and 30-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent #3,229,433 to MILES in view of US Patent 6,061,991 to DAHL teaches that it is known in the art to use wood composite or synthetic wood to form the deck member, column 4, lines 65-67. Thus, it would have been obvious to one having ordinary skill in the art to form the deck member of MILES out of a wood composite or synthetic wood, as taught by DAHL, in order to prevent the deck member from absorbing moisture from being exposed to external conditions.

Allowable Subject Matter

11. Claims 11,15 and 17 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

12. The following is a statement of reasons for the indication of allowable subject matter: the prior art of record fails to teach the use of first and second facing formed from metal.

The majority of the prior art teach the use of two plastic covers to form the deck cover.

However, the prior art of record does not teach a double metal deck facing.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yvonne m. Horton whose telephone number is (703) 308-1909.


Yvonne M Horton

Primary Examiner

June 3, 2002